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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,832	09/05/2003	Gary M. Richter	023720-0339	8427

7590 10/31/2005

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EXAMINER
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NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/656,832

Applicant(s)

RICHTER ET AL.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 42-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 42-49 and 51-64 is/are rejected.
- 7) ☒ Claim(s) 50 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/30/04; 1/27/05</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This final Office action is in response to (a) the amendment filed on December 30, 2004 by which claims 1-21, 23-27, 29, 31, 32, 35-37, and 39-41 were amended and claim 38 was canceled, (b) the election and amendment filed May 26, 2005 by which claims 1-23 and 39-41 were canceled and claims 42-68 were added, and (c) the election and amendment filed August 25, 2005 by which claims 24-37 and 65-68 were canceled.

*Thus*, claims 42-64 are pending in this application and have been examined on the merits.

### ***Election/Restriction***

Applicant's election of Group II, i.e., claims 42-64, in the reply filed on August 25, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). It is noted that the claims which have been elected are the only pending claims in this application.

### ***Abstract***

Applicant is reminded of the proper language and format for an abstract of the disclosure. The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "is disclosed" in line 1.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 43, 48, and 49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 43 recites the limitation "the sides" in line 1. There is insufficient antecedent basis for this limitation in the claim. It is noted that claim 42 sets forth "a first side". Note also claims 48 and 49.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 42-49 and 51-64 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,366,099 (Schmid '099).

Schmid '099 discloses a merchandising system comprising a first base (16 defined between element 12 and the horizontal portion above element 42 shown in Figure 3) having a front (top side of Figure 3), a back (horizontal portion disposed above element 42 in Figure 3 of Figure 3) and sides (right and left of Figure 3); an assembly (30, 28, 27, 26, and the unnumbered rectangular portion shown in Figure 3 which surrounds elements 42, 44, and 32A and which

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includes element 14, as shown in Figure 1) wherein the assembly is movably coupled and slidably engaged with the first base (16) and includes a member (the unnumbered rectangular portion shown in Figure 3 which surrounds elements 42, 44, and 32A and which includes element 14, as shown in Figure 1) configured to extend beyond the back of the base to create a third space; the member of the assembly including a biasing mechanism (30) and curved pusher (26), i.e., the corners of 26 are curved, and the member is integrally formed, i.e., the elements are considered to be integrally formed once assembled; a first side (18 - left side of Figure 3) is configured to be directly coupled to the first base (16) in a first position (solid lines in Figure 1) defining a first storage space and to be coupled to the first base (16) in a second position (dotted lines in Figure 1) defining a second storage space; the first side (18) is not integrally formed with base (16); members (44) integrally form with the side that adjustably couple (at top of Figure 3) the side (18) to the base (16) by portions (i.e., teeth) that releasably engage the base; the portions that releasably engage the base define connectors, i.e., the teeth connect to element 32, 50; the first base (16) has a beveled surface (unnumbered - see triangular section near element 28 in Figure 1); the first base (18) does not include a back wall, i.e., any elements of the system are considered to define "side" walls; the base (16) includes one projection on at least one side (similar to element 46 but on the top of Figure 3) that are configured to couple to a side of a second base (19 and 44 on the right side of Figure 3 is considered to define a second base) whereby the second base has apertures (defined between adjacent elements 48); the system comprising a panel (at 20).

***Allowable Subject Matter***

Claim 50 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 1-41 have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendments canceling claims 1-41 and adding new claims 42-64.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

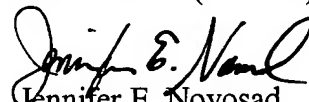
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer E. Novosad  
Primary Examiner  
Art Unit 3634

October 27, 2005